IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos.730, 732, 733, 734 and 736 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PROJECT MANAGER
Versus
PATEL BHUDARBHAI MOHANBHAI AND ANOTHER

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Appearance :
MR RR MARSHALL for the Appellant
MR AJ PATEL for Respondetnt No.1
Mr ND Gohil, AGP for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 03/08/2006

COMMON ORAL JUDGMENT

Since factual and legal aspects in all these appeals being common, all these appeals are being disposed of by this common judgment.

By filing this group of appeals under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code, the acquiring body i.e. ONGC has challenged the judgment and order passed by the Reference Court in Land Acquisition Reference No.1024 of 1987 to 1030 of 1987. The learned Judge of the Reference Court disposed of the above refererences by his common judgment and order dated 22.10.2003 and allowed all the references partly.

On behalf of the acquiring body, certain lands were sought to be acquired on temporary basis for the purpose of its project work by issuing . Notification under Section 35 of the Act. The Land Acquisition Officer after issuing personal notices to the claimants and after considering the evidence on record has fixed the amount of Rs.51 per Are as yearly rent. The claimants were not satisfied with the same and therefore requested for Reference under Section 18 of the Act. The Land Acquisition Officer referred the matter to the District Court under Section 18 of the Act. According to the claimants, looking to the potentiality of the land the yearly rent should be fixed at Rs.151 per Are. The quantum of compensation in each of these appeals different. However the point is common. The aforesaid references were thereafter disposed of by the learned Judge by recording evidence in Reference No.1026 of 1987. The learned Judge thereafter by the impugned order partly allowed the References by enhancing the rent. In each of the References additional amount was awarded as per the final directions in the judgment of the trial Court. It is not necessary to go into the quantum fixed by the Court as the learned advocate Mr Marshal for the appellant-Corporation has restricted his arguments regarding certain directions issued in the operative part of the judgment wherein the Reference Court has observed as under:-

"The applicant is entitled to get additional amount of yearly rent at the rate of Rs.100/- per Are over the rent fixed by ONGC from time to time with the interest at the rate of 9% per annum from the date of due date of running till the date of payment is made."

In each of the References such direction is issued by the Reference Court. Mr Marshall submitted that this direction is contrary to law and there is no provision for fixing the future increase without knowing whether the ONGC would continue with the temporary acquisition or as to what would be the future that would be fixed by the ONGC. He, therefore, submitted that the Court could not have fixed the rent for future period. He submitted that even otherwise when the acquisition is for a temporary court, the Court should not have issued such directions.

A group of first appeals being First Appeal No.792 of 2003 and other cognate matters have been disposed of by the learned Single Judge of this Court vide order dated 21.03.2006 wherein the learned Single Judge has observed in paragraph 5.2 as under:-

"5.2 On the facts of the case, it is evident that the Reference Court has also determined the further rent which issue was not before it. I am, therefore, of the opinion that the contention raised by the learned Advocate for the appellant that the observation or direction issued by the Reference Court in the operative part of the orders require to be quashed and set aside, is required to be accepted. If the said direction is allowed to remain, then it would amount to granting the rent which is over the rent fixed by the appellant-ONGC from time to time. Moreover, the same has been fixed without considering as to what would be the future rent fixed by the

appellant ONGC, which is beyond the scope of reference. Hence, if the said observation is allowed to remain then, in that event such compensation would be much more than the amount which has been found to be adequate by the Court."

In the present group of appeals the appellant – ONGC has prayed as under:-

"5(a) to quash and set aside the part of the impugned judgment and award dtd.22.10.1993 passed by the Ld. Extra Asst. Judge, Mehsana, in LAR Case No.1024/87 whereby the Court orders the payment of yearly rent of Rs.100/- per acre over the rent fixed by ONGC from time to time and that too with running interest @ 9% p.a."

Considering the aforesaid facts, all these appeals are allowed. The observations of the learned trial Judge, "*...over the rent fixed by ONGC from time to time with the interest at the rate of 9% per annum from the date of due date of running till the date of payment is made*" are set aside. The appeals are accordingly allowed in terms of paragraph 5(a) of the appeal memo to the aforesaid extent with no order as to costs.

(P.B.Majmudar, J.)

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